

The Honorable James L. Robart
U.S. District Court Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAY SCHUYLEMAN, an individual

Plaintiff,

v.

BARNHART CRANE AND RIGGING CO.,
a State of Delaware Corporation

BARNHART CRANE AND RIGGING, LLC,
a State of Delaware Limited Liability
Company,

Defendants.

Civil Action No. 2:23-CV-00562-JLR

AGREEMENT REGARDING
ELECTRONICALLY STORED
INFORMATION AND ~~[PROPOSED]~~
ORDER

JURY TRIAL DEMANDED

**AGREEMENT REGARDING ELECTRONICALLY STORED INFORMATION
AND ~~[PROPOSED]~~ ORDER**

Plaintiff Jay Schuyleman (“**Plaintiff**” or “**Schuyleman**”) Defendants Barnhart Crane and Rigging Co. and Barnhart Crane and Rigging, LLC (together, “**Barnhart**” or “**Defendant**”) (collectively, the “**parties**”), hereby stipulate to the following provisions regarding the discovery of electronically stored information (“**ESI**”) in this matter:

A. General Principles

1. An attorney’s zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and

1 contributes to the risk of sanctions.

2 2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P. 26(b)(1)
 3 must be applied in each case when formulating a discovery plan. To further the application of the
 4 proportionality standard in discovery, requests for production of ESI and related responses should
 5 be reasonably targeted, clear, and as specific as possible. This agreement is intended to assist the
 6 parties in identifying relevant, responsive information that has been stored electronically and is
 7 proportional to the needs of the case. The agreement does not supplant the parties' obligations to
 8 comply with Fed. R. Civ. P. 34.
 9

10 **B. ESI Disclosures**

11 Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each party
 12 shall disclose the following information.

13 Custodians. The ten (10) custodians most likely to have discoverable ESI in their possession,
 14 custody, or control. If a party has ESI data for fewer than ten (10) custodians, the party must list all
 15 custodians. The custodians shall be identified by name, title, connection to the instant litigation,
 16 and the type of the information under the custodian's control.
 17

18 1. Non-Custodial Data Sources. A list of non-custodial data sources (*e.g.*, shared drives,
 19 servers), if any, likely to contain discoverable ESI.
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21 2. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain
 22 discoverable ESI (*e.g.*, third-party email providers, mobile device providers, cloud storage) and, for
 23 each such source, the extent to which a party is (or is not) able to preserve information stored in the
 24 third-party data source.

25 3. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by type,
 26 date, custodian, electronic system or other criteria sufficient to specifically identify the data source)
 27

1 that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

2 **C. ESI Discovery Procedures**

3 1. On-site inspection of electronic media. Such an inspection shall not be required absent a
4 demonstration by the requesting party of specific need and good cause or by agreement of the
5 parties.

6 2. Search methodology. The parties shall timely confer to attempt to reach agreement on
7 appropriate search terms and queries, file type and date restrictions, data sources (including
8 custodians), and other appropriate computer- or technology-aided methodologies, for discovery.
9 The parties shall continue to cooperate in revising the appropriateness of the search methodology
10 if another party, upon good cause, shows that the producing party's methodology was inadequate.
11

12 a. Prior to running searches:

13 i. No later than 14 days following the entry of this Order, the parties shall exchange
14 the data sources (including custodians), search terms and queries, any file type and
15 date restrictions, and any other methodology that it proposes to use to locate ESI
16 likely to contain responsive and discoverable information. The producing party may
17 provide unique hit counts for each search query.
18

19 ii. No later than 21 days following the entry of this Order, the parties will engage in a
20 meet-and-confer process regarding additional terms sought by the non-producing
21 party.
22

23 b. The following provisions apply to search terms / queries of the requesting party. Focused
24 terms and queries should be employed; broad terms or queries, such as product and
25 company names, generally should be avoided. A conjunctive combination of multiple
26 words or phrases (e.g., "computer" and "system") narrows the search and shall count as
27

1 a single search term. A disjunctive combination of multiple words or phrases (e.g.,
2 “computer” or “system”) broadens the search, and thus each word or phrase shall count
3 as a separate search term unless they are variants of the same word. The producing party
4 may identify each search term or query returning overbroad results demonstrating the
5 overbroad results and a counter proposal correcting the overbroad search or query.
6

- 7 c. The producing party shall produce documents responsive to the terms agreed upon by
8 the parties no later than the later of 30 days after the parties have met and conferred or
9 the deadline for an applicable discovery request. Thereafter, the parties shall continue
10 to confer in good faith to reach agreement about any remaining terms of those initially
11 proposed as part of the process set forth in paragraph C.2.a. The producing party shall
12 produce documents responsive to any newly agreed upon terms no later than 30 days
13 after the parties have reached agreement on those terms.
14

15 3. Format.

16 a. ESI will be produced to the requesting party with searchable text and/or with
17 extracted text files and with appropriate software load files when possible, in a format to be
18 decided between the parties. Acceptable formats include, but are not limited to, native files,
19 multi-page TIFFs (with a companion OCR or extracted text file), single-page TIFFs (only with
20 load files for e-discovery software that includes metadata fields identifying natural document
21 breaks and also includes companion OCR and/or extracted text files), and searchable PDF.
22

23 b. Unless otherwise agreed to by the parties, files that are not easily converted to image
24 format, such as spreadsheet, database, and drawing files, may be produced in native format.

25 c. Each document image file shall be named with a unique number (Bates Number).

26 d. If a document is more than one page, the unitization of the document and any
27

1 attachments and/or affixed notes shall be maintained as they existed in the original document.

2 e. The full text of each electronic document shall be extracted (“Extracted Text”) and
3 produced in a text file when possible. The Extracted Text file shall be named with the unique
4 Bates Number corresponding to the produced document.

5 4. De-Duplication. The parties may de-duplicate their ESI production across custodial and
6 non-custodial data sources after disclosure to the requesting party, and the duplicate custodian
7 information removed during the de-duplication process tracked in a duplicate/other custodian field
8 in the database load file.

9 5. Email Threading. The parties may use analytics technology to identify email threads and
10 need only produce the unique most inclusive copy and related family members and may exclude
11 lesser inclusive copies. Upon reasonable request, the producing party will produce a less inclusive
12 copy.

13 6. Metadata Fields. If the requesting party seeks metadata, the parties agree that only the
14 following metadata fields need be produced, and only to the extent it is reasonably accessible and
15 non-privileged: document type; custodian and duplicate custodians (or storage location if no
16 custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file name; file size;
17 file extension; original file path; date and time created, sent, modified and/or received; and hash
18 value. The list of metadata type is intended to be flexible and may be changed by agreement of the
19 parties, particularly in light of advances and changes in technology, vendor, and business practices.

20 7. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an electronic
21 format, the production of hard-copy documents will include a cross-reference file that indicates
22 document breaks and sets forth the custodian or custodian/location associated with each produced
23 document. Hard-copy documents will be scanned using Optical Character Recognition technology

1 and searchable ASCII text files will be produced (or Unicode text format if the text is in a foreign
2 language), unless the producing party can show that the cost would outweigh the usefulness of
3 scanning (for example, when the condition of the paper is not conducive to scanning and will not
4 result in accurate or reasonably useable/searchable ESI). Each file will be named with a unique
5 Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding production
6 version of the document followed by its file extension).

7
8 8. Non-party Subpoenas. A party that issues a non-party subpoena (“Issuing Party”) shall
9 inform the non-party that the parties to the litigation have requested that non-parties produce
10 documents in accordance with the specifications set forth in this Section C and provide the non-
11 party with those specifications. The Issuing Party shall produce to the opposing party, as soon as
12 reasonably practicable, copies of any documents obtained pursuant to a non-party subpoena. If the
13 non-party production is not Bates-stamped, the Issuing Party will endorse the non-party production
14 with unique prefixes and Bates numbers prior to producing it to the opposing party.
15

16 **D. Preservation of ESI**

17 The parties acknowledge that they have a common law obligation, as expressed in Fed. R. Civ.
18 P. 37(e), to take reasonable and proportional steps to preserve discoverable information in the
19 party’s possession, custody, or control. With respect to preservation of ESI, the parties agree as
20 follows:
21

22 1. Absent a showing of good cause by the requesting party, the parties shall not be required to
23 modify the procedures used by them in the ordinary course of business to back-up and archive data;
24 provided, however, that the parties shall preserve all discoverable ESI in their possession, custody,
25 or control.

26 2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P. 26(e) with
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1 discoverable ESI responsive to a particular discovery request or mandatory disclosure where that
2 data is created after a disclosure or response is made (unless excluded under Sections (D)(3) or
3 (E)(1)-(2)).

4 3. Absent a showing of good cause by the requesting party, the following categories of ESI
5 need not be preserved:

- 6 a. Deleted, slack, fragmented, or other technologically inaccessible data.
- 7 b. Random access memory (RAM), temporary files, or other ephemeral data that are
- 8 difficult to preserve without disabling the operating system.
- 9 c. On-line access data such as temporary internet files, history, cache, cookies, and the
- 10 like.
- 11 d. Data in metadata fields that are frequently updated automatically, such as last-opened
- 12 dates (see also Section (E)(5)).
- 13 e. Back-up data that are duplicative of data that are more accessible elsewhere.
- 14 f. Server, system, or network logs.
- 15 g. Data remaining from systems no longer in use that is unintelligible on the systems in
- 16 use.
- 17 h. Electronic data (e.g., email, calendars, contact data, and notes) sent to or from mobile
- 18 devices (e.g., iPhone, iPad, Android devices), provided that a copy of all such electronic
- 19 data is automatically saved in real time elsewhere (such as on a server, laptop, desktop
- 20 computer, or “cloud” storage).
- 21
- 22
- 23

24 **E. Privilege**

25 1. A producing party shall create a privilege log of all documents fully withheld from
26 production on the basis of a privilege or protection, unless otherwise agreed or excepted by this
27

1 Agreement and Order. Privilege logs shall include a unique identification number for each
2 document and the basis for the claim (attorney-client privileged or work-product protection). For
3 ESI, the privilege log may be generated using available metadata, including author/recipient or
4 to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata
5 provide insufficient information for the purpose of evaluating the privilege claim asserted, the
6 producing party shall include such additional information as required by the Federal Rules of Civil
7 Procedure. Privilege logs will be produced to all other parties no later than 30 days before the
8 deadline for filing motions related to discovery unless an earlier deadline is agreed to by the parties.
9

10 2. Redactions need not be logged so long as the basis for the redaction is clear on the redacted
11 document.

12 3. With respect to privileged or work-product information generated after the filing of the
13 complaint, parties are not required to include any such information in privilege logs.
14

15 4. Activities undertaken in compliance with the duty to preserve information are protected
16 from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

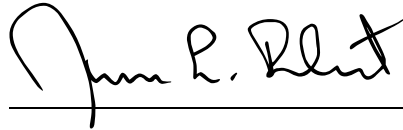
17 5. Pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored
18 information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not,
19 for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by
20 the producing party of any privilege applicable to those documents, including the attorney-client
21 privilege, attorney work-product protection, or any other privilege or protection recognized by law.
22 This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d).
23 The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
24 shall serve to limit a party's right to conduct a review of documents, ESI or information (including
25 metadata) for relevance, responsiveness and/or segregation of privileged and/or protected
26
27

1 information before production. Information produced in discovery that is protected as privileged or
2 work product shall be immediately returned to the producing party.

ORDER

Based on the foregoing, IT IS SO ORDERED.

DATED: February 22, 2024

A handwritten signature in black ink, appearing to read "James L. Robart", is written over a horizontal line.

The Honorable James L. Robart
U.S. District Court Judge

1 Dated: February 22, 2024

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